

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN LARRY JENT**, on January 18, 2005 at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Larry Jent, Chairman (D)
Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Hal Jacobson (D)
Rep. William J. Jones (R)

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Marion Mood, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 184, 1/11/2005;
HB 198, 1/11/2005;
HB 167, 1/11/2005;
HB 45, 1/11/2005
Executive Action: HB 167; HB 198; HB 45; HB 165

HEARING ON HB 184

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, opened the hearing on **HB 184**,
Revise library federation laws.

(REPS. MALCOLM, HENRY and DICKENSON left to present bills
elsewhere.)

Proponents' Testimony:

Darlene Staffeldt, State Librarian, provided written testimony, a
map of Montana's six library federations and a letter from Bette
Ammon, Director, Missoula Public Library.

[EXHIBIT\(sth13a01\)](#)

[EXHIBIT\(sth13a02\)](#)

[EXHIBIT\(sth13a03\)](#)

Jim Smith, Montana Library Association, stated some of his
association's members were involved in crafting HB 184. He
touted the library federations as being unique and innovative
creations which fit well into the state with its concept of
resource and information sharing. The changes proposed in HB 184
allow the federations to operate and function more smoothly.

Opponent's Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE, requested a breakdown
of funding for federation meetings from Ms. Staffeldt and wanted
to know the amount of money required to fund the library office.
Ms. Staffeldt consulted with her Central Services Manager and
stated that the total State Library budget is roughly \$3.5
million; in Fiscal Year 2004, the federation budget was \$100,000
and this year's HB 2 package calls for a minor increase to
\$128,000.

VICE CHAIR BROWN noted the jump in funding. **Ms. Staffeldt**
recalled that in the late 1970's and early 1980's, the funding
level had been over \$500,000. She advised that the increase to
\$128,000 was an attempt to restore the budget cuts of the 2001
session. The budget over the last few years had been at
\$174,000. **VICE CHAIR BROWN** remarked that a 28% increase was not
a "minor" increase; she wondered why this much of an increase was
necessary, given the fact that the operation was purported to be
running much more smoothly and efficiently now. **Ms. Staffeldt**
stated that the funding is also used for continuing education and

workshops, for cooperative purchases by the federation libraries, and for shared software.

VICE CHAIR BROWN reiterated that she had previously asked about the funding cost for the federation but Ms. Staffeldt was talking about something entirely different now. **Ms. Staffeldt** explained that the actual cost of running the federations is roughly 15% of the total funding for each; the \$100,000 amount is split in half; \$50,000 is divided equally between the six federations and the balance is divided according to population density, with the more populous areas receiving a greater amount. If one federation receives \$20,000, their operating cost cannot exceed 15% or \$3,000. **VICE CHAIR BROWN** commented that in her example, she should have used \$64,000 rather than \$50,000 since the actual budget was \$128,000.

REP. ALAN OLSON, HD 45, ROUNDUP, inquired why language on Page 3, Lines 14 and 15, "... funds of the federation must be maintained as a separate account" was eliminated. **Ms. Staffeldt** surmised it was because the money is distributed to the individual libraries instead of the headquarters library. **REP. OLSON** asked into which account the money was deposited. Ms. Staffeldt consulted with a member of the audience; **CHAIRMAN JENT** asked the witness to come forward and be recognized. **Kris Schmidt, Central Services Manager, State Library**, explained that many of the changes in HB 184 were in response to the budget cuts. The federation headquarters no longer received a check for the total amount; the money is divided up and dispersed directly to the individual libraries, eliminating the need for one single account.

REP. OLSON commented that under current law, the board had advisory power only; because this was stricken, he wondered whether the by-laws would set up binding powers for the board or whether it would remain as an advisory board. **Ms. Staffeldt** advised the board would remain as an advisory board. **REP. OLSON** asked if she would object to leaving this language in the bill. **Ms. Staffeldt** replied that she would not.

REP. MARY CAFERRO, HD 80, HELENA, asked Ms. Schmidt for a historical perspective on the funding process. **Ms. Schmidt** advised that the funding comes from a shared account in the coal trust fund; five agencies draw funding out of this account after review and approval by the Natural Resource Subcommittee and the Coal Board. At one time, more money was appropriated for the libraries; as the revenue went down, the funding shrank as well and due to the recent budget cuts, the federation's funding was pared down to \$100,000. **REP. CAFERRO** wondered how the budget cuts of 2003 played into this. **Ms. Schmidt** stated the cuts were

due to the shifting of monies in the General Fund and the allocation of coal trust money to other accounts. **REP. CAFERRO** surmised that the increase of \$28,000 should be considered a restoration. **Ms. Schmidt** agreed, saying that the federations' budget had dropped dramatically and when there was an increase in the coal trust fund revenue, the increase to the federations was approved.

REP. JOAN ANDERSEN, HD 59, FROMBERG, asked Ms. Staffeldt whether libraries were assessed a fee to participate in the federation. **Ms. Staffeldt** stated there was no fee. **REP. ANDERSEN** wondered whether participating libraries received a portion of the \$64,000. **Ms. Staffeldt** advised that libraries submit a "Plan of Service" each year and receive monies based on the services they plan to provide; this would include the purchase of software and travel expenses incurred with regard to federation meetings. **REP. ANDERSEN** inquired if non-participating libraries were excluded from the training provided by the federations. **Ms. Staffeldt** replied that the federations would not exclude them; but, if they did not join, they may not receive any of the funding.

Closing by Sponsor:

REP. MCALPIN closed.

HEARING ON HB 198

Opening Statement by Sponsor:

REP. DAN VILLA (D), HD 86, opened the hearing on **HB 198**, Define "student intern" in the context of state employment rights and benefits. He explained that HB 198 allows state agencies to hire and train students; this benefits both, and it gives students the experience needed to compete for future job openings.

Proponents' Testimony:

Randy Morris, Department of Administration, stated that HB 198 provides for greater flexibility in hiring student interns from any accredited school, including out-of-state institutions. Currently, state agencies have contracts in place with Carroll College, the University of Montana, Montana State University, and Montana Tech to supply their student interns; other campuses such as colleges of technology or tribal colleges do not have existing contracts. In addition, students attending out-of-state universities are not eligible. **Mr. Morris** added that the definition of temporary and short-term employment in 2-18-101 does not sufficiently address student intern needs: temporary

workers are limited to 12 months, and many students work spring breaks and summers throughout their college years. Short-term workers are limited to 90 days, and the Legislative Services Division routinely prefers to hire student interns on a two-year basis in order to properly train them and have them become proficient in their duties. According to current contracts with the institutions listed above, state agencies are being charged an administrative payroll processing fee and are required to duplicate the state plan for workers compensation. HB 198 would allow agencies to either continue to employ students from these schools or to use an FTE (full-time employee) for an internship.

{Tape: 1; Side: B}

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIR BROWN commended the sponsor for bringing this bill forward; she was surprised that the definition was not already in code. She believed, however, that students were excluded from the parameters for regular full-time state employees which **Mr. Morris** confirmed; he added that they do not receive full benefits and fall into the same category as short-term workers.

REP. BERNIE OLSON, HD 10, LAKESIDE, asked how many student interns were currently employed by the state. **Mr. Morris** estimated that during the last legislative session, there had been 23; he pegged their number at 13 for Fiscal Year 2004. He added that the real value was in the opportunities presented to both the students and the state agencies; students gain valuable experience and it gives agencies another recruiting tool.

REP. ANDERSEN wondered whether student interns received college credits for their work. **Mr. Morris** advised that interns working for credit do not earn wages; the ones who do get compensated have to maintain their student status to be considered under the bill's definition. **REP. ANDERSEN** inquired whether they still had to pay tuition even though they did not earn any credits. **Mr. Morris** referred this question to the sponsor, and **REP. VILLA** explained that he is currently on an internship through Montana Tech and received 15 credits for this semester; he added that he was required to pay the full tuition.

REP. ANDERSEN was still not clear about how this worked. **Mr. Morris** advised that a student could enroll and pay the fees for the number of credits he wanted to take; some of the work opportunities presented to him could be course related and, if agreed to between the school and the agency, credits would be given. He cautioned that most often, no credits were provided;

it was merely an opportunity for the student to work and earn wages. **REP. ANDERSEN** again asked if tuition had to be paid when the student intern did not receive credits for his work.

CHAIRMAN JENT invited **REP. GORDON HENDRICK** to clarify this issue.

REP. HENDRICK, HD 14, SUPERIOR, told of a program in Superior which prepares High School students for the workplace. The program mirrors that of universities and colleges: the students pay for the course and receive a credit. They do not get paid but it is conceivable that it could translate into a job later on, either after school or during breaks. The Forest Service had offered six of the students summer jobs under this arrangement; if they returned to this work after graduation, of course, they were compensated.

REP. ROBIN HAMILTON, HD 92, MISSOULA, inquired if a significant increase in student interns was expected upon passage of this bill which **Mr. Morris** confirmed. He added that agencies would still have to go through the FTE requisition process and act within their budget constraints.

REP. BRUCE MALCOLM, HD 61, EMIGRANT, wondered how the temporary work of student interns fits in with the cap on employment imposed on agencies. **Mr. Morris** advised that the temporary status allowed under current law restricts it to 12 months of employment and provides for full benefits. The student intern status does not allow for any benefits or leave, making it akin to the definition of short-term work, except that the short-term is defined as a 90-day period and HB 198 would extend the 12 months to a two-year period. **REP. MALCOLM** probed further, asking whether the program would replace other temporary employees. **Mr. Morris** denied that it would.

VICE CHAIR BROWN advised that the bill specifically says that the terms "intern" and "employee" cannot be used interchangeably because they are separate entities: an intern does not have the status of a state employee. She then asked whether student interns would be counted as part of the vacancy savings program. **Mr. Morris** replied that they would not.

Closing by Sponsor:

REP. VILLA closed.

HEARING ON HB 167

Opening Statement by Sponsor:

REP. GARY MACLAREN (R), HD 89, opened the hearing on **HB 167**,
Revise frequency of delivery of business list to department of

revenue. He offered Amendment HB016701.ash which corrected an oversight. He recounted that the Secretary of State's Office was required to provide the Department of Revenue with a list of corporations once a year; with the advent of computer technology, it became a monthly report. An audit during the last interim showed that this practice does not comply with statute, hence the proposed change.

[EXHIBIT](#)(sth13a04)

Proponents' Testimony:

Elwood English, Chief Legal Counsel, Secretary of State's Office, explained that HB 167 would put in statute what had been practiced for some time. He stressed the importance of the amendment: without the word "new," his office would have to provide a list of all corporations on a monthly basis which would be redundant; the list should only include newly formed corporations for each month.

Neil Peterson, Department of Revenue, stated that structure changes happen much more rapidly in today's business world; it was not uncommon to see entities being formed for a very short period of time for a specific business purpose. Receiving this information in a more timely manner allows the Department to inform those entities about their tax compliance obligations earlier.

Opponents' Testimony: None

Questions from Committee Members and Responses:

VICE CHAIRMAN BROWN asked for the number of Limited Liability Partnerships (LLP) and Limited Liability Corporations (LLC) as well as the fees associated with these. **Mr. English** offered to provide those numbers later and advised that the fees are merely filing fees based on the cost of handling the paperwork. **VICE CHAIR BROWN** wondered if this was the \$15 fee. **Mr. English** advised that the \$15 fee was for the annual report; the filing fee for a corporation was about \$70 unless it was accompanied by the request to issue stock; this would increase the fee.

(Mr. English provided the requested information later that day)

[EXHIBIT](#)(sth13a05)

REP. SUE DICKENSON, HD 25, GREAT FALLS, was curious as to whether there was a list for companies that were no longer viable. **Mr. English** replied that if companies do not file a report or declare bankruptcy, they are cancelled eventually. He believed that the Department of Revenue would look into it if the business no

longer paid their taxes and would determine that the business no longer exists. He added that if a business was dissolved voluntarily, they would notify the Secretary of State's Office; usually, though, failure to file their annual report and respond to repeated warning notices results in suspension and eventual cancellation.

CHAIRMAN JENT advised that there is a formal process for corporations and partnerships wanting to dissolve which is set in statute.

REP. A. OLSON wondered if it would not benefit the Department of Revenue to get an updated list of dissolved or no longer viable corporations as well. **Mr. English** was not sure of a benefit since the tax status and the registration status of a corporation were different. He was certain there were standards to determine whether a business should continue to pay taxes because of an asset, even though they were no longer in business.

CHAIRMAN JENT asked Mr. Peterson to follow up on this issue.

{Tape: 2; Side: A}

Mr. Peterson elaborated that based on the list the Department gets, they solicit the businesses to supply the needed information. As to the other issue, he confirmed that there was a formal dissolution process which included a certificate issued by the Department, saying that all taxes were paid. This ensures that a company is current with their filing obligations before they may dissolve. He was not sure if a list of dissolved businesses was beneficial because of the above-mentioned checks and balances system. In the case of businesses no longer filing the annual fee with the Secretary of State's Office to keep their organization in good standing, there is a process by which they can notify the Department.

VICE CHAIR BROWN voiced concern with the practice of setting up an LLC for the sole purpose of buying an expensive motor home and taking advantage of the State's tax laws; this was apparent because the LLC is dissolved after the purchase. She was also curious about their tax obligation. **Mr. Peterson** replied the mere purchase and licensing of a motor home did not make them a regular customer of the Department; nonetheless, the Department will track the LLC's activity even it did not have tax status.

VICE CHAIR BROWN was adamant that something should be done about a practice she felt bordered on tax abuse; she wondered how many of these LLC's were never renewed, especially in Missoula County.

Mr. Peterson promised to look into it and supply the requested information.

Closing by Sponsor:

REP. MACLAREN closed.

(**CHAIRMAN JENT** announced a 10-minute break; **VICE CHAIR BROWN** advised that she was bringing forth a bill dealing with this issue)

HEARING ON HB 45

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 0 - 6.5}

REP. ALAN OLSON (R), HD 45, opened the hearing on **HB 45**, Revise sick leave laws. He gave a brief overview and added that one provision in HB 45 allows employees to use sick leave under the Family Medical Leave Act which is a federal law. He stressed that the bill does not provide for additional benefits; it merely streamlines and updates current law.

Proponents' Testimony:

Randy Morris, Department of Administration, echoed that HB 45 addresses current State law as it defines sick leave and expands the definition to include current practice such as allowing eligible employees to use accrued sick leave during leave of absence for personal medical needs or care of an immediate family member, be it short-term or long-term. It allows for attendance of funerals and parental leave; and it makes rule-making authority permissive rather than mandatory.

Opponents' Testimony: None

Informational Testimony:

Don Judge, Teamsters Local 190, stated he would be a proponent of HB 45 were it not for the fact that he feared this legislation would have a negative impact on former Governor Racicot's Executive Order, granting leave policy benefits to domestic partners. Since laws take precedence over Executive Orders, he feared HB 45 would leave this issue up to the discretion of State agencies.

Questions from Committee Members and Responses:

REP. B. OLSON asked for the reason behind striking the word "shall" and inserting "may when necessary" on Page 2, Line 26.

Mr. Morris explained that the Department determined that

administrative rules were not required since there was statute governing the definition and utilization of sick leave. The change in language makes it clear that rules would become permissive rather than mandatory. **REP. B. OLSON** requested an explanation of Mr. Judge's concerns with regard to this change. **Mr. Morris** replied that this bill redefined current statute and allowed agencies to draft policies in accordance with the law. **REP. B. OLSON** felt his question was not answered properly and asked again whether changing "shall" to "may" eliminated the Executive Order. **Mr. Morris** stated this was not the intent of the bill but he was not sure if it did. **REP. B. OLSON** expressed that he would like to get a definitive answer to his question.

CHAIRMAN JENT surmised **REP. B. OLSON** wanted an opinion as to the legal effect of the changes in this statute on Governor Racicot's Executive Order concerning the status of domestic partners with regard to sick leave.

While he was researching the statute, **VICE CHAIR BROWN** referred to Page 2, Lines 13 and 14, and asked whether the Family and Medical Leave Act of 1993 was a nationwide law which **Mr. Morris** confirmed. **VICE CHAIR BROWN** wondered if an agency which had a health policy and did not specifically State it, would still take medical leave into account within that employee's sick leave status. **Mr. Morris** said this was correct. **VICE CHAIR BROWN** commented that leaving policy up to an agency's discretion made her nervous; she would rather see that agencies are required to have a policy in place which would guarantee uniformity. **Mr. Morris** replied there were pros and cons to having everything spelled out in statute. HB 45 might open an arena for inconsistencies but it also addressed specific situations that were not defined before; given the changes in defining "traditional" family, he anticipated the Department would come back to the next Legislature to request amendments so that the law would reflect the changes.

REP. EMELIE EATON, HD 58, LAUREL, asked if with this language, the intent was to permit individual agencies to make decisions. **Mr. Morris** confirmed that the Department was looking for a general policy. **REP. EATON** felt that, by making it permissive rather than mandatory, they were allowing agencies the discretion of not implementing certain policies; this defied the purpose of the bill. **Mr. Morris** explained that this was meant to be a minimum policy; if an agency did not adopt their own policy, this would be the minimum State agencies would have to adhere to. **REP. DICKENSON** inquired if **Mr. Morris** was amenable to amending the bill so that it would include language pertaining to the Executive Order. **Mr. Morris** replied he did not think the

Department would oppose such an amendment; the bill was requested to correct the difference between policy and statute.

(REP. JONES returned to the hearing at 9:35 A.M.)

Closing by Sponsor:

REP. A. OLSON reminded the committee that Governor Racicot's Executive Order was not mentioned in the original law; subsequently, the bill had no effect on it. He closed by saying that he hoped the bill would pass out of committee as is because it contained some much needed definitions; he feared that it may not pass if the suggested amendment was added.

CHAIRMAN JENT clarified that executive orders stay in place until rescinded by the Chief Executive.

EXECUTIVE ACTION ON HB 167

Motion: REP. BROWN moved that HB 167 DO PASS.

Motion: REP. BROWN moved that AMENDMENT HB016701.ASH BE ADOPTED.

CHAIRMAN JENT advised that the amendment was a conceptual amendment.

Vote: Motion that HB016701.ASH BE ADOPTED carried unanimously by voice vote; REP. JACOBSON voted aye by proxy.

Motion/Vote: REP. BROWN moved that HB 167 DO PASS AS AMENDED. Motion carried unanimously by voice vote; REP. JACOBSON voted aye by proxy.

EXECUTIVE ACTION ON HB 198

{Tape: 2; Side: B}

Motion: REP. A. OLSON moved that HB 198 DO PASS.

Discussion:

REP. HENDRICK commented he would vote for this bill because it gave Montana students the chance to stay in the state; as a facilitator for the school-to-work and job-shadowing programs, he would be working with this very necessary provision. He emphasized that HB 198 was instrumental in helping keep Montana students in the State after graduation because of the work experience they had gained; it was important that Montanans help to shape the state's future.

CHAIRMAN JENT concurred, adding it was important to have definitions in statute to help guide agencies who hire students.

Vote: Motion carried unanimously by voice vote; REP. JACOBSON voted aye by proxy.

Motion/Vote: REP. BROWN moved that HB 198 BE PLACED ON THE CONSENT CALENDAR. Motion carried unanimously by voice vote; REP. JACOBSON voted aye by proxy.

CHAIRMAN JENT asked if there were any objections to taking Executive Action on HB 184. **REP. A. OLSON** informed him that he had requested an amendment for HB 184 which, on Page 3, Line 24, would add back in "... with advisory powers only" When **VICE CHAIR BROWN** asked if this was a conceptual amendment, **CHAIRMAN JENT** advised it was substantive. **Sheri Heffelfinger** posed the legal question whether trustees *could* be only advisory. **CHAIRMAN JENT** decided to postpone Executive Action on HB 184, pending research on this issue.

EXECUTIVE ACTION ON HB 45

Motion: REP. HENDRICK moved that HB 45 DO PASS.

Discussion:

REP. B. OLSON advised he would defer to the chairman's legal expertise.

CHAIRMAN JENT was still unclear as to why the change from "shall" to "may" was made and asked the sponsor to explain. **REP. A. OLSON** stated it gave the agencies the discretion that if they needed rules, they could go through the rule-making process; and if not, it made no sense to go through it.

REP. HENRY stated she was not concerned that the bill would override the intent of the Executive Order; she was concerned with the fact that the provisions on Page 2, Lines 7 through 14, do not include provisions to take care of a future stepchild as an immediate family member (if the marriage has not yet taken place); she feared he or she could be excluded.

CHAIRMAN JENT surmised that the definitions in Section 1 (b) (vii) were as defined in the Family and Medical Leave Act of 1993 since this section refers to the Act.

REP. HENRY requested to let the minutes show that it was not the committee's intent to have any adverse effect on the Executive Order.

CHAIRMAN JENT advised, also for the record, that this issue helped to shed light on the outcome of a committee's deliberations: in the interpretation of statutes, the courts look at the plain language first and then at the legislative history (testimony of witnesses and the intent of legislators through their comments). He stressed that if HB 45 was passed out of committee, it was his intent and opinion that it had no effect on Governor Racicot's Executive Order. **CHAIRMAN JENT** added that unless the Legislature specifically countermands an executive order, it would stand unless the court rescinds it. **Ms. Heffelfinger** concurred.

REP. B. OLSON asked whether "...at an agency's discretion...." on Page 2, Line 15, applied to all definitions in Lines 5 through 16 since there were semicolons all the way through the list of definitions. **CHAIRMAN JENT** explained that agency discretion modifies 11 (b), Subsection (vi) and (viii) since it is only mentioned in those two places.

REP. HENDRICK asked the sponsor about Mr. Judge's concern. **REP. A. OLSON** advised that some time ago, Governor Racicot issued an Executive Order allowing domestic partners to have certain benefits. A bill in the 2001 session sought specifically to override the Order but it failed in committee (House State Administration), and Mr. Judge was concerned that HB 45 was another attempt at overriding this Order. He repeated that this bill would not do that.

(**REP. JACOBSON** returned to the hearing at 9:55 A.M.)

REP. DICKENSON surmised it was unnecessary to force agencies to make rules when the definitions in the bill specified what is considered under sick leave. **REP. A. OLSON** advised it has become more common to replace "shall" with "may" in the rule-making process. **Ms. Heffelfinger** agreed, saying that there had been some clarification regarding the rule-making authority which is a very specified process. Recent discussion among agencies had led to an agreement that much of the internal management procedures do not have to fall under the Montana Administrative Procedures Act (MAPA) and be considered formal administrative law which is binding. This is why rules are referred to as "policies" and many new bills change "shall adopt rules" which is a mandate under MAPA to "may if you need to" adopt rules. **Ms. Heffelfinger** promised to provide relevant information to the committee.

REP. DICKENSON wondered whether a city or county official would have to go through the rule-making process in order to establish rules if HB 45 did not pass. **Ms. Heffelfinger** clarified that only state agencies have to comply with MAPA, not local governments.

REP. MARY CAFERRO, HD 80, HELENA, asked for more clarification that HB 45 did not affect the Executive Order concerning domestic partners. **Ms. Heffelfinger** recalled that the Order was much broader than the issue of sick leave; it dealt with non-discrimination in the application of employee rights with regard to sexual orientation; it did not really have to do with domestic partnerships. She assured the committee that their discussion was outside the scope of HB 45, and the committee would not, in any way, address the Executive Order; the bill defines sick leave in a more specified way so that agencies can continue to do what they are already doing. Current statute did not incorporate what sick leave is used for, such as maternity leave, disabilities or short-term leave.

CHAIRMAN JENT ruled that the Executive Order is not germane to the title of the bill, thereby effectively halting the direction which the discussion was taking.

REP. CAFERRO wondered whether public input was allowed with regard to the rule-making process. **Ms. Heffelfinger** replied that policies dealing with an agency's internal operations do not have to go through public hearings because their application relates to the agency's internal operations.

VICE CHAIR BROWN interjected that in that same vein, agencies were prohibited from making policies which were against the law. **Ms. Heffelfinger** advised that the rule-making or policy-making had to be within the scope of the law. Anytime an agency posts a rule, it has to publish that it is adopting said rule, and the Legislature ascertains that it is within the scope and intent of the law. She added that the question had been raised whether agencies were circumventing the law by calling it a policy rather than applying the rule-making process, thereby adopting policy without public input (which is required in the rule-making process).

CHAIRMAN JENT summarized that in the past, the Legislature has given agencies more discretion whereas nowadays, what is expected of an agency is spelled out in black and white; making public policy, though, is the Legislature's job, not the agencies'.

Vote: Motion carried 12-4 by roll call vote with **REPS. CAFERRO, DICKENSON, EATON,** and **HAMILTON** voting no.

EXECUTIVE ACTION ON HB 165

{Tape: 3; Side: A}

Ms. Heffelfinger advised that HB 165 had been discussed and Executive Action was postponed pending information on the Senate confirmation of the student regent. She stated that the student regent can serve without having been confirmed by the Senate.

REP. MACLAREN asked whether this was specified in statute, and **Ms. Heffelfinger** replied there was nothing in statute that said the student regent could not serve if not confirmed by the Senate; it was in statute by interpretation.

Motion: REP. A. OLSON renewed his DO PASS AS AMENDED motion on HB 165.

Discussion:

REP. A. OLSON reiterated that in current statute, the Governor has the opportunity to appoint the student regent to a term of not less than one year and not more than four years; with the Legislature meeting every other year, the requirement of a Senate confirmation would be circumvented since every other student regent would, under HB 165, miss the confirmation process. He therefore opposed the bill.

REP. HAMILTON pointed out that language on Page 1, Line 28, says that the student regent may be appointed to succeeding terms so nothing prohibits him or her from serving for another term. He recalled that 12 out of the last 16 student regents have served one-year terms.

REP. A. OLSON contended that REP. HAMILTON's statement merely reinforced his previous arguments that there was no need for the bill because every one of those regents had been appointed at the governor's discretion.

REP. B. OLSON announced he would oppose a bill which obviously was born out of an abnormality in the process in which personalities clashed; he felt this was no basis for making law.

REP. JONES voiced his opposition because the bill restricts the Governor's ability to make appointments.

REP. HENDRICK recalled that during the hearing, it was stated that past student regents' terms had been as follows: 11 served one-year terms; one for a two-year term; two for three-year terms; and one served for four years. This belies the point that students at two-year colleges are not given a chance to serve.

REP. HENRY maintained that two-year students would not bother to apply if a term could span four years, even if present law states "one to four years."

REP. ANDERSEN advised that many two-year students go on to four-year schools; she did not believe it would preclude them from continuing their term on the Board of Regents.

Vote: Motion failed 6-10 by roll call vote with REPS. CAFERRO, EATON, HAMILTON, HENRY, JACOBSON, and SMALL-EASTMAN voting aye.

Motion/Vote: VICE CHAIR BROWN moved that HB 165 BE TABLED AND THE VOTE REVERSED. Motion carried.

ADJOURNMENT

Adjournment: 10:20 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth13aad0.TIF](#))